BENGADASALAM v. KHOR SOON WENG & ORS.

[O.C.J. (Mustapha J.) April 28, 1984]
[Alor Setar — Civil Suit No. 59 of 1982]

Club — Whether club has legal capacity to hold tenancy — Societies Act 1966, s. 9(b).

The issue before the Court was "whether a club, registered under the Societies Act 1966, has the legal capacity to hold a tenancy."

Held: a club registered under the Societies Act 1966 not only has the legal capacity to own lands but also the legal capacity to hold a lease or tenancy.

Cases referred to:

(1) *Jarrot* v. *Ackerley* (1915) 113 L.T. 371.
(2) *Indo-Australian Trading Co. Ltd.* v. *Hin Ann Huay Kuan & Ors.* [1956] M.L.J. 193.
(3) *Malay Women's Welfare Association* v. *Tan Ek Joo Realty Co.* [1957] 3 M.C. 101.

CIVIL SUIT.

S.P. Annamalai for the plaintiff.
C. Shanmugaiah for the defendants.

Cur. Adv. Vult.

Mustapha J.: The Plaintiff is the registered owner of premises No. 287-L, Jalan Aman, Kulim.

The Defendant, Teo Kheow Club, is occupying the said premises as a monthly tenant, paying a rental of $50.00 per month. The Plaintiff is issuing receipts for rents as landlord and the name of the tenant in the receipts is "Teo Kheow Club", the Defendants.

The Plaintiff filed a writ claiming a declaration that Teo Kheow Club is not the tenant of the said premises followed by the normal consequent claims of vacant possession, damages and costs.

The sole issue is:

"Whether a club, registered under the Societies Act 1966, has the legal capacity to hold a tenancy"

It is an old English law that a lease cannot be granted to an association which being unincorporated has no legal capacity (*Jarrot* v. *Ackerley*).

The legal fiction of corporation dates back to many centuries ago, when Blackstone drew a distinction between a body politic and the members who formed it from time to time. Corporate bodies were formed by statutes, charters, prescriptions or by implication. It is on this legal fiction that a club or any unincorporated body like a partnership firm, cannot hold a tenancy.

Coming nearer home, we have the case of *Indo-Australian Trading Co. Ltd.* v. *Hin Ann Huay Kuan & Ors.*[2], where the Court of Appeal held that the First Respondent a registered society (but not an incorporated body) cannot have the capacity of holding a tenancy. The Court of Appeal had followed *Jarrot* v. *Ackerley*[1], even though that registered society was empowered under the Societies Ordinance with the capacity to sue or be sued which capacity is not sufficient to clothe the society with the mantle of corporation.

This was followed by *Malay Women's Welfare Association* v. *Tan Ek Joo Realty Co. Ltd.*[3].

In the judgment of the *Indo-Australian Trading Co.'s case*, His Lordship Chief Justice Murray-Aynsley stated that under the Societies Ordinance Cap. 217 of the 1936 Rev. Edition, provision was made for a registered society to own movable property but not immovable property.

In our Societies Act 1966 section 9(b) provides that an immovable property, if not registered in the name of trustees, may be registered in the name of the society. It is clear that this provision of section 9(b) distinguishes what the learned Chief Justice stated in the *Indo-Australian's case* that there was no provision in the Singapore Societies Ordinance as regards immovable property.

Like the Companies Act which gives provision to companies to own property, the association or club registered under the Societies Act 1966 likewise gives provision to clubs to own property. And if these clubs can be registered as owners of land there is no reason at all why it cannot be registered as lessee, an interest in land which is less than that of a full ownership. If clubs can hold superior title to land, there is no earthly reason why they cannot hold an inferior title.

There are thousands of unincorporated bodies like social clubs and political societies in our country. It is unthinkable, nor practical and indeed ridiculous to hold that these important institutions which forms part of our society cannot even be a tenant, but strangely they can be the landlords.

The Court therefore rules that a club registered under the Societies Act 1966 not only has the legal capacity to own lands but also the legal capacity to hold a lease or a tenancy.

From the above reasons, the Plaintiff's suit is dismissed with costs.

Claim dismissed.

Solicitors: *Annamalai & Co.; C. Shanmugaiah.*